

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Elgin Community College
Respondent.**

**REQUEST PURSUANT TO SECTION
308 of the CLEAN WATER ACT
(CWA), 33 U.S.C. § 1318(a)**

DOCKET NO. V-404-308-12-DS1

INFORMATION REQUEST

The U.S. Environmental Protection Agency is requiring Elgin Community College (“you”) to submit certain information regarding the alleged discharge of dredged or fill material into waters of the United States, located in Section 21, Township 41 N, Range 8 E, in the City of Elgin, Kane County, Illinois (the “Site”) (Attachment1). In conjunction with the cease and desist order you received from the U.S. Army Corps of Engineers (Corps), Chicago District, dated June 7, 2012 (Attachment 2), it is alleged that you have impacted wetlands adjoining a tributary of Otter Creek and the Fox River, a navigable water of the United States (Attachment 3). Appendix A specifies the information you must submit relating to the Site. The EPA requests this information under the authority of Section 308 of the Clean Water Act (“CWA”), 33 U.S.C. § 1318, to determine whether you are in violation of the CWA.

Appendix B contains general instructions and definitions that you should use to provide the requested information. Under 40 C.F.R. Part 2, Subpart B you may assert a claim of business confidentiality for any portion of the submitted information. The general instructions in Appendix A include specific procedures for assertion of business confidentiality claims.

If you fail to comply with this request, we may take enforcement action against you under Section 309 of the CWA, 33 U.S.C. § 3319, which contains specified civil and criminal penalties. We have the authority to use the information you provide in response to this request in an administrative, civil, or criminal action.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3518(c)(1)(B)(ii), because it seeks to collect information from specific individuals or entities as part of an administrative action or investigation.

You must send all of the requested information within thirty (30) calendar days to:

Mr. David W. Schulenberg
Senior Enforcement Officer
Watershed & Wetlands Branch
U.S. EPA – Region 5
77 West Jackson Boulevard, WW-16J
Chicago, Illinois 60604-3590

Mr. Keith L. Wozniak
Chief, West Section
Attn: Michael J. Machalek
Regulatory Branch
U.S. Army Corps of Engineers, Chicago District
111 West Canal Street
Chicago, Illinois 60606-7206

Tinka G. Hyde
Director, Water Division
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Date

APPENDIX A

Unless otherwise specified, the following general instructions and definitions apply when providing the information requested in Appendix B.

General Instructions

1. Provide a separate narrative response to each question and subpart of a question set forth in the Information Request.
2. Each response shall identify the number of the question, and if relevant, any subpart to which a response is being provided.
3. Label each document submitted in response to this Information Request with the request number and subpart (if applicable) to which it corresponds. If anything is deleted or redacted from a document produced in response to this Information Request, state the reason for and the subject matter of the deleted or redacted information.
4. If a document you submit is responsive to more than one request, please provide one copy of the document and identify all the requests, by number and subpart, to which it corresponds.
5. For each response, organize the requested information or documents chronologically.
6. When documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information are not available or in your possession and identify any source that either possesses or is likely to possess such information.
7. If any documents or information responsive to a request are not known or are not available to you at the time you submitted your response, but later become known or available to you, you should submit the new information as a supplement to your response. If at any time after submission of your response you learn that any portion is or becomes false, incomplete, or misrepresents the facts, you should notify the EPA of this fact as soon as possible and provide a corrected response. If any part of the response to this Information Request is found to be false, the signatory to the response and the company may be subject to criminal prosecution.
8. If you claim that an entire document responsive to this Information Request is withheld on the basis of a privilege, identify the document and provide the basis for asserting any privilege. For any portion of a document that you claim is withheld on the basis of a privilege, provide the portion of the document for which you are not asserting any privilege; identify the portion of the document for which you are asserting any privilege; and provide the basis for such an assertion.

9. You should provide responsive documents or information even though you consider it confidential information or trade secrets. You may assert a business confidentiality claim for part or all of the information requested, as set forth in 40 C.F.R. Part 2, Subpart B. Information covered by such a claim will be disclosed by the EPA only to the extent and only by the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no confidentiality claim accompanies the information when the EPA receives it, the information may be made available to the public by the EPA without further notice to you.

If you would like the EPA to treat any information, document, or response as “confidential,” you must advise the EPA by placing on or attaching a cover sheet to any document or prefacing any response such language as “trade secret,” “proprietary,” or “confidential business information.” You must clearly identify allegedly confidential portions of otherwise non-confidential documents, and you may want to submit these separately to facilitate identification and handling by the EPA. Pursuant to 40 C.F.R. Part 2, Subpart B, the EPA may at any time send you a letter asking you to substantiate your confidentiality claim.

General Definitions

All terms used in this Information Request shall have their ordinary meaning unless such terms are defined in the Clean Water Act, 33 U.S.C. §§ 1251-1387, or the Clean Water Act’s implementing regulations. The following specific definitions shall apply to the Information Request:

1. “Or” shall mean and/or.
2. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun used, and vice versa; and in a similar fashion, the use of the masculine form of a pronoun shall be construed to also include within its meaning the feminine form of the pronoun, and vice versa; and in a similar fashion, the use of any tense of a verb shall be construed to also include within its meaning all other tenses of the verb so used.
3. “Document” is used in its broadest sense and shall mean and refer to all written or graphic matter of every kind and description however produced or reproduced, whether draft or final, original or reproduction.

APPENDIX B

Unless otherwise specified, the period covered by these requests shall be from [INSERT DATE] to [present or {INSERT DATE}].

- 1) Provide all land documents that reflect [Respondent's name] ("you" or "your") ownership interest in the Site or any portion thereof, including, but not limited to plats of survey, titles, deeds, easements, and property or real estate tax bills.
- 2) [A Notice of Violation ("NOV") was issued to you on [DATE], by the [Name of District] District for the United States Army Corps of Engineers ("USACE"). The NOV states that you [describe activities listed in NOV]. We have information that you [describe factual basis of alleged violation(s)] at the Site without obtaining a permit under Section 404 of the Clean Water Act, 33 U.S.C. § 3344. Provide the following information with respect to the [activities listed in the NOV] [description of factual basis of alleged violation(s)] at the Site:
 - a) Specific purpose(s) of or reason(s) for the activities;
 - b) Date the activities commenced;
 - c) Date the activities were completed;
 - d) Date any dredge or fill material was first deposited; and
 - e) Date any dredge or fill material was removed.
- 3) Provide all documents that authorized you to conduct the [activities referenced in the NOV] [description of factual basis of alleged violation(s)] at the Site, including, but not limited to, correspondence, contracts, agreements, purchase orders, work orders, requests for quotes, quotes, memoranda, invoices, letter agreements, receipts, proposals, statements and any similar documents.
- 4) Provide copies of all documents and information you have which describe the Site's physical attributes and the Site's immediate surroundings, including, but not limited to:
 - a) Topographical (elevational) surveys, including any drawing(s) of vertical or horizontal elevations;
 - b) Soil borings or sample data;
 - c) Vegetation identifications, descriptions, or surveys;
 - d) Site hydrological surveys (e.g., data on ground water and surface water flows); and
 - e) Any engineering or Site plans or maps, including any used for permitting.
- 5) Provide copies of all aerial and ground photos of the Site, which may include original film negatives, positives, digital photos, and/or marked-up aerial photos in your possession. Include a narrative for each photo submitted, providing the date the photo was taken and description of the area depicted in the photo (e.g., directional and orientation references).

- 6) Provide a detailed description of all earthmoving, construction, excavation, and vegetation-clearing activities that occurred in wetlands, streams, ditches, ponds, and lakes on the Site. Describe all earthmoving, construction, excavation, and vegetation-clearing activities, including, but not limited to, piping, decanting, spilling, trenching, culvert placement, road way construction, drag-lining, mechanized or manual clearing of vegetation, windrowing or stockpiling, grading, grubbing, soil excavation or removal, installation of dams or other water control features, and placing fill or dredged material. Include a timeline of the activities that occurred.
- 7) Provide a description of the type(s) of equipment and method(s) used to accomplish the activities referenced in Question __, above.
- 8) Provide copies of any document(s) that describe the length and area of dredged or fill material placement that you added to, excavated from, or rearranged in wetlands, streams, ditches, ponds, and lakes on the Site. If you have no documents recording the length and area of dredge and fill placement, please provide a narrative response with an estimate of these figures.
- 9) Provide the name, title, employer, business address, and business telephone number of each person or company, including yourself, who was involved in any of the activities described in your answers to Questions __-__, above.
- 10) Provide copies of all documentation (including, but not limited to, field notes, maps, photographs, video, aquatic resource assessments, and wetland delineations) of the efforts you made to determine whether the Site or any portion of it contained wetlands or other waters of the United States (e.g., streams, ditches, ponds, or lakes). Identify by name, title, employer, and business address, all persons involved in this determination.
- 11) State whether you, individually or as part of a business, partnership, or corporation, have ever applied for or received a permit, including nationwide, regional, general, individual or after-the-fact permits, issued under Section 404 of the CWA, 33 U.S.C. § 1344, or had other prior knowledge of the CWA Section 404 Regulatory program. Provide copies of all relevant documents including, but not limited to, permits, permit application materials, and correspondence specifically mentioning the USACE or the CWA Section 404 program.
- 12) State whether you, individually or as part of a business, partnership, or corporation, have applied for or received a permit issued by the State of [] or its political subdivisions or agencies, including the [insert appropriate agencies and/or political subdivisions], related to work performed at the Site. Provide copies of all relevant documents including, but not limited to, permits, permit application materials, and correspondence related to processing any permit.
- 13) Provide any other information or documents you deem relevant to this matter.

- 14) You or a responsible agent must submit all requested information under an authorized signature with the following certification:

I certify under the penalty of law that I have examined and am familiar with the information submitted in responding to this information request for production of documents. Based on my review of all relevant documents and inquiring of those individuals immediately responsible for providing all relevant information and documents, I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.